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October 16, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

RE: Notification of Written Ex Parte Communication: Access Charge Reform--Pricing Flexibility: CC Docket No. 96-262

Dear Mr. Caton:

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Today, on October 16, 1997, J. Manning Lee, Vice President-Regulatory Affairs, sent, via hand delivery, to A. Richard Metzger, Acting Chief of the Common Carrier Bureau, the attached letter. In the letter, TCG urges the Commission to allow pricing flexibility only where competition has in fact developed. TCG also recommended that pricing flexibility must be proportional to the degree of developed competition and reminded the Commission that newly endorsed facilities-based tandem competition requires adequate physical collocation facilities. An original and two copies of this letter are being submitted in accordance with Sec. 1.1206(a)(1) of the Commission's rules.

Thank you very much for your assistance in this matter.

Sincerely,

Judith E. Herrman

Judith E. Herrman
Manager, Federal Regulatory Affairs

cc: A. Richard Metzger
Rich Lerner
Jay Atkinson
Dana Bradford
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October 16, 1997

A. Richard Metzger
Acting Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, Room 500
Washington, DC 20554

Re: Access Charge Reform -- Pricing Flexibility: CC Docket No. 96-262

Dear Mr. Metzger:

Any proposal to offer ILECs significant pricing flexibility must assure that competitors will exert sufficient market pressure to prevent anti-competitive pricing practices by the ILECs. In the tandem transport and switching market, which remains the only access market without any measurable amount of competition, competitive market pressure will only develop if new entrants are able to obtain sufficient, cost-effective physical collocation arrangements.

The Commission's Access Reform Order [1] removed the regulatory pricing anomalies that artificially restricted tandem competition. Competitors now are able to share the access revenues when they provide tandem services and will eventually be able to compete against an unsubsidized tandem switching rate. While TCG has begun to provide tandem services in selected markets, our greatest obstacle to entering this market is the difficulty we sometimes face obtaining the physical collocations which are an essential prerequisite for providing competitive tandem services.

For example, in Texas TCG has been attempting to secure tariffed physical collocation arrangements since November 7, 1996, when the Texas Public Utility Commission (TPUC) issued its arbitration award.[2] TCG's hopes for a streamlined collocation process in Texas were dashed as soon as Southwestern Bell (SWBT) filed

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[1]Access Charge Reform, First Report and Order, FCC 97-158 (rel. May 16, 1997).

[2]Public Utility Commission of Texas, *Petition of MFS Communications Company, Inc., et. al.*, PUC Docket Nos. 16189, 16196, 16226, 16285 and 16290, Arbitration Award (November 7, 1996).

its collocation tariff sheets pursuant to the arbitration decision. To TCG and other CLEC's dismay, the tariff contained no rates for standard collocation services. Instead, SWBT indicated that all prices would be set on an individual contract basis (ICB). The proposed tariff also contained unreasonable terms and conditions, such as requiring the installation of unnecessary point-of-termination (POT) bays, restricting the ability of TCG to contract for its own collocation construction, and even limiting access to SWBT restrooms without an escort. Pursuant to CLEC petitions regarding these and other issues, the TPUC recently found in favor of the CLECs and required SWBT to file a revised physical collocation tariff by November 3, 1997 which fully complies with the term of the TPUC arbitration award. [3]

In addition to TCG's ongoing procedural efforts to resolve the deficiencies in SWBT's physical collocation tariff, TCG has been negotiating with SWBT to obtain physical collocation on an interim, true-up basis. Unfortunately, some of SWBT's terms and conditions to which TCG objected in the proposed tariff, such as which entity has the right to construct the cage, have also presented problems and caused delays during this negotiation process.

Altogether, TCG has been seeking physical collocation arrangements in the State of Texas for nearly one full year. Though the Texas PUC may finally be resolving this matter in the near term, it should be clear that one year is entirely too long for facilities-based tandem competition to arrive in Texas or any other state.

It should also be clear that until a substantial number of collocation arrangements are in fact secured by facilities-based competitors in a particular geographic market, the incumbent LECs will not experience any appreciable competitive-pressure on their access (tandem transport and switching) prices. Should access charge rates and structures be relaxed prematurely, there will not be sufficient competitive pressure present to prevent any ILEC anti-competitive pricing practices. As TCG has previously indicated, allowing ILECs ICB pricing and RFP responses, eliminating the transport and local rate structures and consolidating the pricing baskets would all represent substantial deregulation. Such deregulation would be premature before substantial, effective facilities-based competition exists for each access market.

TCG is not seeking price protection from the Commission. It seeks only that the Commission look to its own long and unblemished history of gradually introducing competitive pricing flexibility for dominant carriers in newly-competitive markets. ILECs,

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[3]Public Utility Commission of Texas, *Petition of MFS Communications Company, Inc., et. al.*, PUC Docket Nos. 16189, 16196, 16226, 16285,16290, 16455, 17065, 17579, 17587, and 17781, Arbitration Award (September 30, 1997).

such as SWBT, which have systematically frustrated the development of access competition should not be rewarded by the Commission for such behavior since it will only encourage further anticompetitive behavior.

Tandem competition has only recently been endorsed by the Commission in its Access Reform Order. It must be allowed to develop as an effective market-based control on ILEC pricing as intended by the Congress. Where such competition has in fact developed, pricing flexibility which is proportional to the degree of competition would be warranted.

Sincerely,

J. Manning Lee
Vice President, Regulatory Affairs

cc: William Caton
Rich Lerner
Jay Atkinson
Dana Bradford
Paul Glenchur
David Konuch
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